Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
SEP 19 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	CC Docket No. 96-146
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	CC Docket No. 93-22

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

I. INTRODUCTION

Pilgrim files its Reply Comments in the above-referenced proceeding in order to respond to the positions of various parties in this proceeding. Pilgrim reurges the issues and proposed solutions that it advanced in its Comments, and emphasizes that while it believes that some changes are necessary, many of the rules proposed by the Commission, and solutions proposed by the parties, are contrary to Congressional intent and inconsistent with market realities and the operations of carriers. The Commission should adopt rules that are consistent with its Congressional mandate, and that ensure a level playing field among all of the parties to this proceeding.

II. RULES ARE NECESSARY AND USEFUL TO PROTECT CONSUMERS; GOING BEYOND CONGRESSIONAL INTENT COULD INVALIDATE RULES

Pilgrim concurs with the Commission that changes in the rules are necessary to more clearly effectuate the consumer protections mandated by Congress. Pilgrim also agrees that some changes in the rules may be necessary to curb unintended violations of the rules, clarify application of the rules and anticipate possible manipulation of the proposed rules. Pilgrim is concerned, however, that a significant deviation from Congressional intent, failure to adopt content neutral rules or failure to provide clear guidance to the industry could lead to invalidation of the rules or leave the Commission and the industry with rules which cannot be enforced. Pilgrim also cautions the Commission to avoid adopting rules which may cause either unintended disruption of development in the communications and information service industries, or encouragement of anticompetitive conduct among carriers and service providers.

A. The Commission Should be Careful to Adhere to the Clear Statutory Direction and Balance Achieved by Congress

Congress adopted stringent consumer protection standards. Within the standards, congress set forth certain specified exemptions. Some of the exemptions were initially adopted to avoid interfering with legitimate communications offerings while providing for consumer protection in the offering and provision of information services. A primary example of such balancing in the past was the tariffed services exemption, which was rescinded by Congress in the 1996 Act. In the place of the tariffed services exemption and other modifications made to the Act, Congress has enacted new and more narrowly tailored and balanced exemptions and restrictions which are designed to provide adequate consumer protection without interfering with communications and non-deceptive information service offerings.

The Commission appears to be bound by its past proposals and a siege mentality against what it perceives to be pervasive abuses in the information services industry. The principal problem with the narrow focus evidenced in the Commission's NPRM and the comments of a few parties is that the rules eventually adopted through this proceeding will not reflect the new balancing of interests congress undertook in adopting the 1996 Act which departs substantially from prior schemes adopted by Congress or the Commission.[1/]

In its comments, Total Telecommunications (Total Telecom.) correctly identified that Section 4(i) of the Communication Act does not empower the Commission to either overturn Congress' definition of pay-per-call, or ignore the balancing of interests adopted by Congress. Total Telecom. correctly observed that the Commission has previously recognized

---

[1/] Some parties, such as the Connecticut Attorney General, seem to be trapped in the past when making suggestions which are clearly at odds with the statutory scheme adopted by Congress in the 1996 Act. *See* Comments of Conn. A.G. at 8.

the balancing of interests achieved by Congress and declined to disturb that balance in Telephone Disclosure and Dispute Resolution Act (TDDRA), Report and Order, 8 FCC Rcd 6885, 6887 (1993). Total Telecom. at 10.

By ignoring or reaching beyond the Congressional mandate, the Commission places the entire regulatory scheme at risk. Failure to adopt rules which are consistent with the Congressional mandate would substantially delay implementation of the very consumer protections that the Commission has determined should be adopted on an expedited basis. In addition to the cases cited by Total Telecom., there are a number of instances in which the Commission, in single minded pursuit of a goal resulted in agency action which was beyond or at odds with Congressional authority. The Commission's overreaching not only disrupted industry practices but was later overturned by subsequent legislation, creating periods of uncertainty in the regulated industry and requiring extensive work to correct.

In MCI Telecommunications v. American Tel & Tel, 114 S.Ct. 2223 (1994) the Court found that regardless of the Commission's interests in promoting efficient telephone service, even when the alternative policy might be desirable, the Commission cannot ignore or substantially deviate from the clear direction of Congress. Id. at 2231-33. In MCI, the Courts invalidated Commission decisions reaching back 11 years to the Fourth Report and Order, 95 FCC 2d 554 (1983). Once the Court opinion was issued, carriers which had operated in reliance on longstanding Commission policy found themselves in the difficult position of being in violation of the Act while being in apparent compliance with Commission rules. The rules, however, were contrary to the plain language of the Act and so, the court ruled, were void ab initio. Given the substantial stakes in the current competitive market for information services and the penalties which could be levied upon carriers and service providers by both the FCC, the FTC and state commissions operating under incorrect FCC interpretations of the Act, the Commission cannot and should not undertake the adoption of regulations or policies which would place carriers and service providers at substantial risk as it did in MCI.

The activities of the Commission in adopting the competitive carrier series of decisions is also instructive. In that instance, the Commission undertook an aggressive and extensive set of regulations on a regulatory policy in order to open network architecture for the provision of competitive communications and enhanced services. Pilgrim submits that this situation is even more analogous to the present as information services are simply the non-data subset of enhanced services, as discussed further below. The Commission undertook the adoption of an extensive set of regulations, spending vast governmental and carrier resources in proposing and adopting regulations which were overturned by the Ninth Circuit as being, inter alia, beyond the Commission's authority under the Communications Act. Once again, the almost religious zeal of the Commission to further a policy which it believed was proper but was beyond the authority granted to it under the Act resulted in substantial disruption to the industry and subjected carriers to substantial costs which could have been avoided with adoption of rules consistent with the Act.

Once the Commission adopts rules pursuant to this rule making it may not have another opportunity to correct any errors prior to review and reversal by the courts. As at least two parties to this proceeding have already argued that the proposed rules exceed the Commission's authority. Without question, the Commission will have had an opportunity to rule on this issue. Section 402 of the Act allows a party aggrieved by a Commission action to seek review of that action in the Court of Appeals, without first seeking reconsideration from the Commission. Section 405 says that appeal to the Court of Appeals is appropriate if administrative review is exhausted. With respect to the question of whether the adoption of the proposed rules exceeds the Commission's authority, the issue will have presented, fully briefed and the Commission will have had the opportunity to consider the issue.

To the extent that constitutional and content-based issues have been raised by Pilgrim and other parties in this proceeding, Pilgrim requests the Commission take the opportunity to consider these arguments carefully as this rule making proceeding may be its last opportunity to address those concerns prior to Appellate review. Additionally, in instances in which the Commission may have already evidenced a predisposition,[2/] the Courts have found that it would be futile to require that an appellant request reconsideration of the Commission's Order. In such instances, immediate appeal to the appellate courts is appropriate. See All America Cables & Radio, Inc. v. F.C.C., 736 F.2d 752, 761 (D.C.Cir. 1984). The communications and information services industries are too large and evolving so rapidly that they cannot afford the disruption occasioned by Commission's adoption of rules which exceed its authority or otherwise violate constitutional protections.

B. The Commission Should Assure the Constitutionality of any Adopted Rules by Protecting Their Content Neutrality; Adoption of Least Restrictive Means Could Assure Constitutionality

A number of the parties to this proceeding have expressed the same concerns as Pilgrim regarding the dispirit application of these rules based on content of material transmitted. While the Commission's restrictions do not explicitly contain any content restrictions, the Commission must recognize the services under consideration are all information services and therefore contain some level of content. Under these circumstances, the Commission should carefully apply

---

2/ We are hopeful that the Short tolerable list of free information services identified by Total Telecom. in its comments are not indicative of the Commission's predisposition in this regard. *See* Comments of Total Telecom. at 22. In any event, exemption of any information services simply because they appear to be "free," especially when LECs and other carriers may have toll charges and commission schemes associated with such information services, would be discriminatory and would not assure the level playing field mandated by Congress.

regulations which achieve the Commission's consumer protection goals, and do so by the means least restrictive to the provisions of information services. Some of the parties have recognized that regulation of content is not permissible even when done through the activities of participating carriers or local exchange carriers subject to Commission regulation. (See LOED comments at p. 9; Total Telecom comments at pp. 13-16; American Civil Liberties Union v. Reno, 929 F.Supp 824, 930 F.Supp 916 (1996); see also Alliance for Community Media, et al, 116 S.Ct. 2374 (1996).

The expansive definition of information services also includes a number of services in which commercial content is not supplied by any IP or carrier. The best example of these services are open forum teleconferencing and other public forum communications offerings in which neither the carrier, an IP or any other commercial party is providing content but the carrier simply provides an open forum for unfettered public communications. The fact that the carrier helps direct consumers to certain forge through sign posts or restrictions of the type of intelligence permissible in such communications does not make such communications commercial.

C. Clear and Precise Definitions Will Also Make Rules More clear, and More Enforceable; Should be Premised on the Definition of Information Services as the Voice Grade Equivalent of the Larger Set of Enhanced Services

At least two of the parties to this proceeding have noted the need to more clearly define "information services" for all the parties. AT&T at p. 4, footnote 11 and Egendorf at p. 3. Both note that the definition of information services is circular and does not provide adequate notice to the parties as to what services are or are not implicated under the Commission's proposed rules.

One issue that has posed a particular point of confusion for Pilgrim in the past is whether "simultaneous audio conversation services" is the same as "teleconference service" and if there is difference, what is the nature and legal basis for that difference. It appears to Pilgrim that information services could be the exact same things as enhanced services except that information services are limited to non-data services. The advantage of adopting a definition similar to this would be that there is a long Commission history of precisely defining the services that fall within enhanced services which could be incorporated into the information service context for the clarity of all parties involved.

It should be apparent to the Commission, however, from reviewing the comments of parties which don't realize that the rules will be applying to their service offerings that information services should either be expansively defined to include everything except 1+ point to point MTS, or that any exclusions should be made on a constitutionally permissible basis. In drafting exclusions from the definition of information services, the Commission should not permit content distinctions between business teleconferencing and private or open forum teleconferencing as such distinctions will run afoul of constitutional protections.

Insofar as the term "information services" is not clearly defined by the Commission, the rules adopted by the Commission may not provide sufficient notice to parties that provide access to non-commercial speech to determine whether the rules apply to them and could create a fatal defect under the Administrative Procedures Act or constitutional limitations.

III. REPLY TO SPECIFIC TECHNICAL ISSUES RAISED BY THE PARTIES

A. Parties Appear to Lose the Focus of the Scope and Intent of the Rules, and Congressional Action

The comments of the parties demonstrate significant loss of focus regarding the scope and intent of the modifications adopted by Congress. As noted by the State of California, Congress did not intend to limit all pay-per-call calling to the 900 service access code (SAC), but intended instead to enhance full cost disclosure to callers prior to incurring charges, preserve or enhance blocking options and prohibit termination of local service for failure to pay for information service calls.

California at 2. Total Telecom properly noted that Congress did not intend to limit all information services to the 900 SAC, and wanted to protect the future development of pay-per-call technology. Total Telecom. at 4.

In addition, Congress wanted to preserve consumer access and competitive options for the delivery of information services. While Congress dispensed with the tariffed services exemption, it also greatly expanded the non-900 options available for providing information services. Each of these options met the criteria noted by the State of California. What Congress did not do is to require these services be provided over 900 SAC; it did not authorize the carriers, especially the LECs to be final arbiters of what can be billed or carried and what must be blocked, and it did not intend to preserve or extend a monopoly over the billing or blocking by LECs and other carriers. Congress also did not intend to make access to these services more difficult, and it did not provide for any material distinction between call types based upon underlying or overt content.

Furthermore, Congress did not require a written signature in all cases; it did not require signature by a legally competent adult and it did not contemplate requiring any particular number presentation on carrier bills. The Commission should reject all of the comments by parties which depart from the language of the statute and clear Congressional history. The Commission can adopt extremely effective rules by remaining true to Congressional language and Pilgrim's comments in this proceeding.

1. Calls for Limitation of Information Services to 900 are Erroneous

In the opening paragraph of its comments' Discussion section, GTE makes an unfortunate and perhaps unintended statement that equates all non-900 pay-per-call services with "deceptive and abusive behavior." this perception, which the Commission apparently shares, as do some others of the commentators, is at odds with the clear and repeated Congressional authority to regulate the provision of pay-per-call services over many non-900 prefixes, <u>including over 800</u>.

By highlighting this assumption underlying its actions, and perhaps underlying the Commissions' proposed rules, GTE has helped to shed light on the primary problem with the proposed regulations - they are almost entirely based on a totally false assumption that pay-per-call service belongs on 900 and no where else.

Congress has repeatedly directly rejected this proposition, and despite three separate refinements of the laws regarding pay-per-call services, Congress has thrice <u>declined to limit pay-per-call services to 900</u>. Moreover, in the telecommunications Act of 1996, congress <u>expanded the specifically authorized means to provide pay-per-call services over 800</u>.

That GTE and certain other carriers would seek to force all carriers to use 900 prefixes for pay-per-call services is not surprising. LEC charges to IXCs for implementing 900 service range into the hundreds of thousands of dollars before a single minute of traffic has been carried, while comparable costs for all other dialing patterns are near-zero. It is not surprising that these carriers would seek Commission support to make all other dialing patterns difficult or impossible to use for pay-per-call services. It is also not surprising that these carriers would attempt, unlawfully, to use limitations in their provision of Billing and collections services to force traffic onto their exorbitantly priced 900 service.

While carrier bias is understandable and inevitable, it is essential that the Commission put aside all Commentators' commercial biases, however concealed beneath public policy pronouncements, and it is essential that the Commission put aside its perceptions about what Congress should have done. Instead, the Commission should reject its proposed rules, in recognition of the substantial deviation between the underlying intent, purpose and effect of those rules and the actual balance struck and laws passed by Congress.

Pilgrim notes that the presubscription rules and the rules controlling charging through the use of credit and calling cards are completely separate, and the requirements imposed on one do not apply to the other. Congress has explicitly set forth a separate and largely different method of consumer notification protection pursuant to the two different methods of charging, Pilgrim will be addressing calling cards further below.

2. Limitations and Costs of 900 Service

While the parties have noted some of the limitations and costs of 900 service, there has been a general failure to fully explore limitations and costs, and the impossible impact on the proposed rules. In its comments, LOED notes that the costs of 900 service are extraordinarily high partially because of the bad debt from the undeniable portion of charges. LO-AD Comments at p. 9. Pilgrim submits that this is not the only reason for the high costs of 900 service. As Pilgrim has noted in prior proceedings, every aspect of 900 service is priced significantly higher than equivalent 800 service offerings. Pilgrim believes that the LECs and major carriers which control most of the 900 SACs take advantage of the fact that 900 service is a discretionary service and charges extraordinarily high rates for transport, termination and billing and collection associated with 900 service under the belief that the information providers can simply pass these charges through to customer. Whether the charge back rate for 900 service is higher than for other services generally is not a cost concern for LECs and many interexchange carriers as the costs of the high charge backs are always charged directly through to the interexchange carrier IP providing the service. As the interexchange carrier or IP bears all of the costs and risks of charge backs, the charge backs cannot justify the extraordinarily high rates charged by LECs and other terminating carriers.

Furthermore, 800 service is used largely as a market tool in conjunction with 900 and other information services. the low costs and general accessibility of 800 service makes it an ideal service for carriers and IPs to use as an advertising, marketing and browsing tool for consumers prior to their accessing a service and providing charging information. 900 service typically is not a preferable service for these purposes as its availability is restricted to certain phones, it is not uniquely situated for subscriber access, the transport rates associated with 900 service make it noneconomical for this purpose and the preamble and charging rules associated with 900 service generally make it unsuitable for this purpose.

B. Rules to be Applied to Presubscription Agreements

1. Continued Call For Written Agreements Are Contrary to Congressional Intent

While the written agreement provisions of the amendments to the Act apply only to presubscription for pay-per-call and not to the issuance of calling cards or credit cards, Pilgrim is still concerned about the tendency of some parties to continue to call for additional restrictions which appear to be expressly rejected by Congress. Pacific Bell, at page 3, expressly calls for a rejection of the electronic form of delivery of written agreements even though Congress expressly sanctioned this exception, and even though Pacific Bell itself issues calling cards electronically, and will not send a card at the customer's option. In instances in which Congress provides specific guidance, the Commission is powerless to ignore the unambiguous expressed intent of Congress.[3/]

Some of the parties misquote or misconstrue the Congressional directive. We note that the Connecticut Attorney General's Office, at pages 5 through 7, argues that the legislative history and the House Report of the Conference Committee envisioned only written agreements. The passage upon which the Connecticut Attorney General relies conveniently deleted the key language "or other appropriate means," from the quoted legislative history, and furthermore, did not provide for extended ellipsis at the end of the quote noting that they had deleted a very important portion of the quoted sentence. The quoted passage, taken as a whole, in fact, supports Congress' express desire not to limit presubscription agreements to "writings executed by a legally competent adult," but envisioned a variety of written, electronic and other written notification delivery schemes which both provide adequate notice to consumers and comport with the increasing reliance on electronic commerce in this industry.

Some of the parties factual arguments do not support their claims. The state of Florida purports to provide extensive evidence of carrier fraud in support of its public policy

---

3/ See e.g., National Association of Better Broadcasting v. FCC, 830 F.2d 270, 275 (D.C. Cir. 1987).

arguments that the Commission should ignore Congressional directives regarding electronic delivery of presubscription agreements. Florida at pp. 3-4. All evidence of carrier fraud presented by Florida in support of its comments relate to the practice of slamming and have nothing to do with pay-per-call practices. Even carrier fraud is irrelevant, however, as Congress specifically provided for delivery of notification through electronic and other appropriate means and expressly eschews the requirement for executed written agreements.

2. Congress Intended Broader Scope Recognizing Electronic Commerce

In its comments, the University of Missouri notes that the "Commission also seeks comment on the <u>dangers of the Congress' acceptance</u> of the validity of electronically transmitted presubscription agreements." (Emphasis added.) The University has correctly characterized the entire set of proposed rules and interpretations - as a <u>rejection</u> of the careful balance struck by Congress in favor of one determined by the Commission and certain commentators, as driven by the perceived "<u>Danger</u>" posed by actually following Congress' instructions.

The entire set of proposed regulations appears to be driven by a desire to thwart the Congressional mandate, to reject the careful balance struck by Congress, which took account not only of "<u>dangers</u>," but also considered the <u>benefits</u> of allowing multiple dialing and billing options, such as flexibility, competition, innovation, consumer convenience, service variety, etc. A recognition of those "dangers," in which Pilgrim often concurs, <u>cannot serve as justification</u> for adopting rules in opposition to the careful balance determined by Congress by imposing restrictions and rules which Congress itself specifically considered and rejected.

The Commission should not attempt to restrict or redefine the meaning of presubscription, the definition of calling cards, or consumers' rights to use these, unfettered and immediately, in connection with pay-per-call services. Congress clearly laid out its regulatory scheme, clearly defined each of these charge mechanisms, clearly understood the electronic, instant or near-instant nature of some of these payment mechanisms, clearly chose to apply very limited advance and/or written requirements to some of these and not others, and clearly defined written to mean something different, more immediate and more electronic than physical delivery of a piece of paper or plastic. If the Commission promulgates the proposed rules, which so sharply deviate from the wording of the 1996 Act, it does so at serious risk that its entire set of rules may be appealed, rejected or suspended.

Congress' carefully constructed balance must be permitted to run its course before the Commission considers changing the rules, and the Commission should not presume to substitute its wisdom about the probable outcome or impose preemptive remedies before the Congressional scheme has been implemented. Instead of adopting the proposed rules, the

Commission should reject the proposed rules, rededicate itself to understanding the flexibility inherent in the new regulatory scheme established by Congress, and rededicate itself to implementing both the protections <u>and</u> flexibility created by the Act.

3. Identification of "Legally Competent Adults" Not Possible; Other Paradigms for Assurance

Several commentors, including California at page three, Connecticut at page 7, and Pacific Telephone at page 8 all call for agreements to be executed by a legally competent adult. Once again, we note that not only was this expressly not required by Congress but, as a practical matter, no matter how desirable, this goal would be impossible to achieve. Practically the only way that an information provider could determine if a person were a legally competent adult would be to have them come into the office with a driver's license or birth certificate and present themselves to a customer service official so that they could verify that the customer was both of legal age. Because IPs generally are not mental health experts, IPs could not ascertain whether a prospective customer is "mentally competent."

Not only would the imposition of a "legally competent adult" requirement be impossible to enforce and administer, it is clearly not contemplated by Congress. It appears to Pilgrim that the use of credit cards or callings cards usually demonstrates that the charging party is a legally competent adult, or authorized by a legally competent adult, as these cards are normally not issued to parties that are not legally competent. Possibly the best measure of legal competence, however, is the actual payment of a bill once it has been submitted.

As a reasonable alternative to the Commission's proposal to require IPs to ascertain the legal and mental competence of its prospective customers, Pilgrim proposed that Pacific Bell's 10-day grace period for persons to reject an account (Pacific Bell at p. 3).

4. Responsibility for Control of Phones; Toll Fraud Cases

The rules that some parties would have the Commission adopt are squarely at odds with the long line of cases adopted by the Commission and the courts with respect to subscriber liability for toll fraud. One of the issues raised by several parties, but otherwise ignored, is the long line of toll fraud cases which have uniformly held that subscribers are responsible for all calls made from their telephones. In a long line cases, most notably Chartways Technologies v. AT&T Communications, File No. E-88-72, Memorandum Opinion and Order, 8 FCC Rcd 5601, 5604 (1993); MCI Telecommunications Corp. v. Ameri-Tel, Inc., 659 F. Supp. 659, 668 (N.D. Ill. 1994); American Message Centers v. Sprint, 8 FCC Rcd 5522 (1993), aff'd sub nom. American Message Centers v. F.C.C., 50 F.3d 35 (D.C. Cir. 1995), the Commission held that even when parties obtained unauthorized access to telephones and were able to create charges through a common carrier that the ultimate subscriber to the telephones was responsible for the access and payment of charges. This was the case even though many of these calls appear to be to information service provider locations in the Dominican Republic, Guyana and other locations well known to the Commission and noted in informational meetings held by the international service division.

In fact, the comments filed by University of Missouri, Columbia appear to be exactly the opposite of their obligations under the toll fraud cases. The University admits that it has several thousand telephones over which it does not exercise physical control. Some institutions that fail to control access to their phones do not avail themselves of very effective means of preventing unauthorized calls and calling card issuance. These blocks are provided expressly to help prevent such fraud. See Atlantic Telco, Inc. and Tel & Tel Payphones, Inc. request for Declaratory Ruling, Order, 8 FCC Rcd 8119, 8120 (Com. Car. Bur. 1993).

The position by the University of Missouri, Columbia that, since it cannot exercise physical control over its phones spread around the campus, it therefore cannot be liable for agreements obtained from or calling cards obtained from such phones appears to be directly contrary to the Commission's long line of toll fraud cases. While Pilgrim believes the FCC should clarify that toll fraud cases generally applied to all calls made from or services ordered from the telephone subscribers, Pilgrim believes the Commission should at least clarify the distinction to be made under its rules and policies.

With respect to the comments of the University of Missouri, Columbia, and as discussed further below, Pilgrim believes that the best way to provide protection for entities such as universities and hospitals, which leave a large number of public access phones available for use by the public, is to utilize the existing blocking mechanism to make blocking information available via LIDB for information services provided via calling card. Pilgrim's request for the loading of 900 and service block into LIDB is discussed further below.

C. Rules to be Applied to Calling Cards

Several parties have recommended consumer protection solutions which are blatantly anticompetitive on their face. Both Southwestern Bell and Florida recommend requiring the use of LEC calling cards and LIDB clearance of LEC calling cards prior to call completion or submission of call data for billing and collection. (Southwestern Bell at pp. 1-2; Florida at p. 5.) In today's competitive market almost all carriers issue calling cards using a variety of platforms and card issuance methodologies. To require that such billing go through LEC calling cards or be verified through the LEC calling card billing screen would effectively limit consumer options and competitive opportunities and should be rejected on its face as unnecessary and anticompetitive. As noted before, Pilgrim believes that what is needed is not strict control over the types of calling cards issued but reliable instant blocking information from each of the

LECs. (See Florida at p. 4.) If the Commission were to require that LECs upload 900 or information service blocking request to LIDB and required all carriers and information providers to poll this information prior to clearing or billing each call, Congress' mandate would thoroughly be carried out and competition would be preserved.

1. "Instant" Calling Cards

Several of the parties including the Commission have extensively criticized the practice of instant issuance of calling cards, but the precise acceptable parameters surrounding the issuance of calling cards have not be acceptable has not been clearly defined. The Alliance of Young Families and other parties in to argue without support that instant calling cards are an inherently deceptive practice which much be prohibited by the Commission. (Alliance of Young Families at p. 3; AT&T at p. 3.) AT&T and other carriers support AYF's argument. These parties fail to recognize that AT&T and other carriers engage in instant calling card issuance programs. Furthermore, there is nothing inherently deceptive with the practice of instant issuance of calling cards so long as the Congressional requirements are met and the cards are properly issued with full disclosure and a right to avoid disconnection of local exchange service for improperly billed information services.

Pilgrim is intrigued by the comments of Pacific Telephone which would require a ten day delay period between issuance of a written presubscription and deniability of billing pursuant to such presubscription period. (Pacific Bell at p. 3.) Pilgrim submits that with respect to calling cards, one way to address the concerns of various parties and the Commission regarding instant issuance of calling cards is to require the issuing party to actually mail a card. First, the card would be instantly authorized by the issuing party, but the issuing party would be at risk for deniability charges in accordance with Pacific Telephone suggestion for a reasonable mailing period -- somewhere between 5 and 10 days.

In order to require the expeditious mailing of a card, however, the Commission will also have to order the local exchange carriers to provide nondiscriminatory and immediate access to billed name and address ("BNA") to all carriers and information providers upon reasonable rates, terms and conditions and on a nondiscriminatory basis. Once again, Pilgrim notes the difficulties it has experienced in the past in obtaining BNA and other relevant information on a real time basis which has significantly and negatively impacted its compete and properly control fraud. Pilgrim requests the Commission to order all LECs to provide real time and on-line BNA for calling card issuance purposes.

2. Independence from Call Origination

Several parties have requested that calling cards be issued that permit the charging of calls to a predesignated phone number which is independent of the origin of the call. Florida Pub. Svc. Comm. at 4; U. of Miss. Col. at 3. Pilgrim believes that this is an essential characteristic of any calling card, and is certainly a characteristic of its calling cards. We support, therefore, the adoption of this requirement as a characteristic of calling cards.

D. Requirements for a Level Playing Field

Pilgrim is somewhat surprised by the number of commenting carriers which failed to recognize that the rules proposed by the Commission will have a significant impact on many of their own offerings. Pilgrim finds particularly curious the enthusiastic support for the rules as proposed by Southwestern Bell and AT&T (Southwestern Bell at p. 2, AT&T at pp. 1-3) as the proposed rules would significantly restrict much of the access they provide to information services and their various service territories, in particular, the commission arrangements on both domestic and international service, supplied by AT&T. As Pilgrim extensively addressed the impacted offerings of the various parties in its original comments, and additional information has been provided by a number of parties to this proceeding, Pilgrim will not comment further except to reemphasize the point that the Commission's rules as proposed will apply to all of these service offerings, and that any distinction among similarly situated offerings of various competitors would be violative of the Act,